

OPEN MEETINGS ADVISORY OPINION NO. 2010-04

Issued On January 14, 2011 By The WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The **Recorder** for the Town of Cowen asks what constitutes a "reasonable" time for the minutes to be available after a public meeting.

FACTS RELIED UPON BY THE COMMITTEE

Based upon information and belief, the majority of governing bodies approve the minutes of their previous meeting at the next regular meeting of the governing body. Some governing bodies release draft minutes prior to their approval at the next meeting; other do not.

In regard to the context of minutes, some governing bodies only record in their minutes the information required to be included in accordance with the Open Meetings Act, *i.e.* the names of persons present and the disposition of votes. Other governing bodies elect to include extensive narrative in their minutes.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

ADVISORY OPINION

The Open Meetings Committee has previously had limited opportunity to consider the question presented. In several prior advisory opinions, it approved procedural rules adopted by governing bodies which contained a requirement that draft minutes, clearly marked as such, be available for inspection within ten working days after the meeting. See O.M.A.O.s 2003-03, 2004-01 and 2005-13 approving rules respectively for the Monongalia County Planning Commission, City of Ronceverte and Greenbrier County Board of Education. In approving the cited procedural rules, the Committee did not rule that the Open Meetings Act mandates the release of draft minutes within ten (10) business days; instead, consistent with its normal practice in reviewing proposed rules establishing meeting procedures for governing bodies, the Committee determined that a governing body's decision to adopt such a rule was not inconsistent with the Open Meetings Act.

In Open Meetings Advisory Opinion 2008-09, the Committee ruled, in passing, that draft minutes for any previous regular or special work sessions should also be made available to the public and media upon request. As a result, Ethics Commission staff has recommended that draft minutes be made available for inspection. Based upon information and belief, some governing bodies make their draft minutes available while others either do not or simply have never addressed this issue due to a lack of requests for draft minutes.

The Committee must determine whether the plain language in the Open Meetings Act requires the release of "draft minutes". Black's Law Dictionary defines minutes as, "The formal record of a deliberative assembly's proceedings, approved (as corrected, if necessary) by the assembly. Black's Law Dictionary 1087 (9th ed. 2009). Robert's Rules of Order, states that:

The record of the proceedings of a deliberative assembly is usually called the minutes, or sometimes - particularly in legislative bodies - the journal. In an ordinary society, unless the minutes are to be published, they should contain mainly a record of what was *done* at the meeting, not what was *said* by the members. Henry M. Robert, Robert's Rules of Order Newly Revised § 48, at 451 (10th ed. 2000)(emphasis in original)

Robert's Rules further provides that "The minutes of the meeting are normally read and approved at the beginning of the next regular meeting, immediately after the call to order and any opening ceremonies." Id. at 4563

The plain language in the Open Meetings Act states that "minutes" must be made available in a reasonable period of time. In accordance with the Black's Law definition of minutes, the Committee finds that minutes do not become the official record of a proceeding until they are approved. There is no indication in the Act that minutes be made available before they are approved. In the absence of plain language requiring the release of draft minutes, the Committee declines to read a requirement into the Open Meetings Act which the Legislature did not specifically prescribe.¹ As such, to the extent that O.M.A.O. 2008-09 is inconsistent with this opinion, it is expressly overruled.

While the Open Meetings Act does not require the release of draft minutes, the Committee encourages governing bodies to make them available for inspection when requested for the convenience of citizens and the press. Moreover, the West Virginia Supreme Court has ruled in a per curiam opinion that tape recordings of a public meeting are subject to disclosure pursuant to the Freedom of Information Act. Veltri v. Charleston Urban Renewal Authority, 363 S.E.2d 746 (W.Va. 1987).²²

Next, the Committee must consider what constitutes a reasonable period of time for the minutes to be available after a meeting. The Committee finds that a reasonable period of time to make minutes available is immediately following the next regular meeting, but no later than close of business on the next business day following that meeting. If material changes are required to be made to the draft minutes reviewed by the body, then, in the absence of compelling circumstances, the minutes should be available for inspection no later than three business days following the meeting. In calculating days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded.

This advisory opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6-9A-11, a governing body or member thereof that acts in good faith reliance on this advisory opinion has an absolute defense to any

¹ Whether the Freedom of Information Act requires the release of draft minutes and/or any recording of a public meeting is a question outside the jurisdiction of the Open Meetings Committee.

² While the Open Meetings Act does not require a governing body to tape its meetings, it appears that many do. O.M.A.O. 2008-12.

civil suit or criminal prosecution for any action taken based upon this opinion, so long as the underlying facts and circumstances surrounding the action are the same or substantially the same as those being addressed in this opinion, unless and until it is amended or revoked.

/s/ Drema Radford, Chairperson